

Court No. - 15

Case :- APPLICATION U/S 482 No. - 4671 of 2024

Applicant :- Kishor Jaiswal And Another

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.
And Another

Counsel for Applicant :- Gaurav Pandey, Mayank Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Karunesh Singh Pawar, J.

Heard learned counsel for the petitioners as well as learned
AGA for the State.

By this petition, the petitioners have prayed for the following
relief:-

"WHEREFORE, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to Allow this application and further quash or set aside the Impugned orders dated 02.05.2024 passed by the appellate court in Criminal Appeal No. 120 of 2024 till the extent whereby it imposes the condition to deposit 20% amount of fine within 20 days to suspend the sentence."

Notice to respondent no. 2 is dispensed with in view of the
proposed order.

Submission of learned counsel for the petitioners is that vide
impugned order, 20% of the compensation amount has been
directed to be deposited within 20 days which is bad order in
the eyes of law and while passing such order under Section 148
N.I. Act, reasons must be given. In support of his contention,
learned counsel for the petitioners has placed reliance on the
judgment of the Supreme Court passed in the case of "***Jamboo
Bhandari v. M.P. SIDC Ltd., (2023) 10 SCC 446***".

Perused the record as well as judgement of the Apex Court in
the case of ***Jamboo Bhandari (supra)***.

The Apex Court in the case of ***Jamboo Bhandari (supra)*** has
held that it is the duty of the Appellate Court to give reasons
while imposing the condition to deposit 20% of the

compensation for suspending the sentence. The blanket order to deposit 20% of the compensation for suspending the sentence in all cases cannot be sustained. Relevant para Nos. 6, 7, 8 and 9 of **Jamboo Bhandari's** case (supra) are extracted below:-

"6. What is held by this Court is that a purposive interpretation should be made of Section 148 of the N.I. Act. Hence, normally, Appellate Court will be justified in imposing the condition of deposit as provided in Section 148. However, in a case where the Appellate Court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded.

7. Therefore, when Appellate Court considers the prayer under Section 389 of the Cr.P.C. of an accused who has been convicted for offence under Section 138 of the N.I. Act, it is always open for the Appellate Court to consider whether it is an exceptional case which warrants grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount. As stated earlier, if the Appellate Court comes to the conclusion that it is an exceptional case, the reasons for coming to the said conclusion must be recorded.

8. The submission of the learned counsel appearing for the original complainant is that neither before the Sessions Court nor before the High Court, there was a plea made by the appellants that an exception may be made in these cases and the requirement of deposit or minimum 20% of the amount be dispensed with. He submits that if such a prayer was not made by the appellants, there were no reasons for the Courts to consider the said plea.

9. We disagree with the above submission. When an accused applies under Section 389 of the Cr.P.C. for suspension of sentence, he normally applies for grant of relief of suspension of sentence without any condition. Therefore, when a blanket order is sought by the appellants, the Court has to consider whether the case falls in exception or not."

Before proceeding further, it would be appropriate to reproduce Section 148 of the Negotiable Instruments Act reads as under:-

"Section 148: Power of Appellate Court to order payment pending appeal against conviction.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under Section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent. of the fine or compensation awarded by the Trial Court:

Provided that the amount payable under this sub- section shall be in

addition to any interim compensation paid by the appellant under Section 143A.

(2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.

(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant."

Perusal of the aforesaid provision shows that the Appellate Court may order the appellant to deposit such sum which shall be a minimum of Rs. 20% of the fine or compensation awarded by the trial court. However, as held by the Supreme Court in **Jamboo Bhandari's** case (supra), it is the duty of the appellate court to give reasons for imposing the condition to deposit 20% of the compensation for suspending the sentence, the order must be reasoned and speaking one.

In the case in hand, the impugned order has been passed in a mechanical manner and without giving any reason. The relevant part of the order is extracted below:-

"अपीलार्थी द्वारा अधिरोपित अर्थदण्ड की 20 प्रतिशत धनराशि 20 दिन के अन्दर संबंधित न्यायालय में जमा करने पर शेष 80 प्रतिशत अर्थदण्ड की धनराशि की वसूली का क्रियान्वयन अपील के निस्तारण तक स्थगित रहेगा। "

From the above order, it is evident that the Sessions Court has not applied its mind before imposing 20% of the compensation amount. It is the case of petitioner no. 1 that he has been suffering from serious ailments like cancer etc. and his case comes under the category of exceptional one, however, the appellate court while passing the impugned order dated

02.05.2024 (*supra*) has completely ignored this aspect and without recording any reasoning has passed the impugned order. Such an order in view of the judgment of the Supreme Court in ***Jamboo Bhandari's*** case (*supra*) is not sustainable.

In view of what has been stated herein above, as also the judgment, above referred, the petition is allowed and the impugned order dated 02.05.2024 is set aside to the extent it directs the petitioners to deposit 20% of the compensation amount before the concerned court .

The District Judge, Lucknow is further directed to reconsider the matter and decide the same in accordance with law after giving opportunity of hearing to the petitioners and respondent no. 2 herein.

Till fresh order is passed as directed above, no coercive steps shall be taken against the petitioners.

Order Date :- 22.5.2024

R.C.